?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 24.10.2018

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THE HON-BLE MR.JUSTICE G.K.ILANTHIRAIYAN

+CRL.O.P.(MD)No.14847 of 2015
and M.P.(MD)No.1 of 2015

#1.Shankar

2.Rajammal ... Petitioners / Accused Nos.1 & 2

~vs~

$1.State rep.by
The Inspector of Police,
District Crime Branch,
Trichy,
In Cr.No.18 of 2015,
Trichy District. ...1st
Respondent/Complainant

2.P.Gnanasekar ...2nd Respondent/Defacto
Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the Crime No.18 of 2015 dated 06.07.2015 on the file of the first respondent Police and quash the same.

!For Petitioner : MR.A.Joel Paul Anto

^For Respondents : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl. Side)

:ORDER
This Criminal Original Petition has been filed to quash the First Information Report in Crime No.18 of 2015 on the file of the first respondent, registered for the offence under Section 406 and 420 r/w 506(i) IPC.

2.The case of the prosecution is that the second respondent has entered into a sale agreement on 21.03.2012 with the petitioners for purchasing a property for the total sale consideration at Rs.17,25,000/~. According to the defacto complainant, he paid a sum of Rs.4,50,000/~ as advance to the petitioners. In the said sale agreement, the time for execution of sale is

specifically mentioned as three months. Even though the second respondent is ready and willing execute the sale deed as per the terms of the agreement, the petitioners did not come forward to do so. When the defacto complainant questioned the same, the petitioners have threatened the defacto complainant with dire consequences. Hence, the present complaint.

3.The learned counsel appearing for the petitioners submitted that there is no offence made out to take cognizance as against the petitioners. Even as per the case of the prosecution, the petitioners have entered into the sale agreement with the defacto complainant in which, they have received a sum of Rs.4,50,000/~ as an advance. Thereafter, the defacto complainant also issued notice calling upon the petitioners to perform their part of contract as agreed by them as per the terms of the agreement dated 21.03.2012. Therefore, the entire issue is civil in nature and the defacto complainant is trying to give criminal color and foisted a false case as against the petitioners herein with mala fide intention in order to harass the petitioners with ulterior motive.

4.The learned counsel for the petitioners would further submit that the defacto complainant ought to have filed a suit for specific performance and without filing the same, the present false case has been foisted. Therefore, he prayed for quashing of the First Information Report.

5.Per contra, the learned counsel appearing for the second respondent submitted that even after receipt of notice, which is issued by the defacto complainant, the petitioners did not come forward to execute the sale deed as agreed by them. It is a clear case of cheating and only with dishonored intention, after receipt of the advance amount, the petitioners refused to execute the sale deed in favour of the defacto complainant. When the defacto complainant questioned the same, the petitioners threatened him with dire consequence. Therefore, all the offences are clearly made out and the first respondent rightly registered the case. Hence, he prayed for dismissal of this petition.

6.The learned Government Advocate (Crl.side) appearing for the first respondent submitted that the First Information Report cannot be quashed at its threshold and investigation has to be completed in a full fledged manner. Therefore, he prayed for dismissal of this petition.

7.Admittedly, the petitioners and the de facto complainant have entered into a sale agreement on 21.03.2012 for selling the property for a sale consideration of Rs.17,25,000/~. The petitioners also received a sum of Rs.4,50,000/~ as advance amount to sale the said property. Thereafter, the defacto complainant also issued notice call upon the petitioners to perform their part of the contract as agreed by them. In the said notice, they stated that the petitioners have received a sum of Rs.6,00,000/~ as advance on various dates. In the complaint, the defacto complainant stated that the petitioners received a sum of Rs.4,50,000/~ as an advance amount. However, this is a clearly a civil case and the defacto complainant ought to have file a suit for execution of sale deed as per the sale agreement dated 21.03.2012.

8.Under these circumstances, whether the offence under Sections 406 and 420 IPC would attract as against the petitioners or not. For the sake of convenience, Section 415 of Indian Penal Code is extracted hereunder:
Cheating.~Whoever, by deceiving any person, fraudulently, or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ?cheat?

9.An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating. In this regard, the learned counsel appearing for the petitioners relied upon judgment reported in AIR 2009 Supreme Court 3191Dalip Kaur & Ors. Vs. Jagnar Singh & Anr wherein the Hon-ble Apex Court held as follows:
12. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non~refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Indian Penal Code. {See Ajay Mitra v. State of M.P. [(2003) 3 SCC 11]}.
13. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in R. Kalyani v. Janak C. Mehta & Ors. [(2009 (1) SCC 516] is attracted, which are as under:
(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.
(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.
(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.
(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.
Yet again, in Hira Lal & Ors. v. State of U.P. & Ors. [2009 (5) SCALE 418], this Court held :
10. The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 of the Code are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face

value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is mala fide.

{See also Harmanpreet Singh Ahluwalia & Ors. v. State of Punjab & Ors. [2009 (7) SCALE 85]}

14. As the High Court has not applied its mind with regard to the aforementioned aspects of the matter, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed.

10.It is seen from the First Information Report that the allegations made by defacto complainant are not disclosed any of the offence as alleged by the prosecution. The entire allegations are civil in nature. Therefore, the petitioners are not liable to be undergo for interrogation.

11.In the result, First Information Report in Crime No.18 of 2015 is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

To

1.The Inspector of Police,
District Crime Branch,
Trichy,
Trichy District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.